

(2004) 05 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7924 of 2004

Naveen Bharat

APPELLANT

Vs

Kurukshetra University and Another

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Citation : (2004) 138 PLR 135

Hon'ble Judges : S.S. Nijjar, J;J.S. Narang, J

Bench : Division Bench

Advocate : Namit Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—We have heard the learned counsel for the petitioner at length and perused the paper-book.

2. The petitioner applied for the post of Lecturer in Fine Arts which was reserved for the members of the Scheduled Caste Category in response to advertisement No. 2/2003 (Annexure P-2) issued by the Kurukshetra University. He was called for interview. On being selected, the petitioner was appointed on the post of Lecturer by order dated 27.6.2003 (Annexure P-4). The petitioner joined on the post on 1.7.2003. The petitioner had been working regularly, but for some reason the salary had not been paid to him. He had made a representation to the Vice-Chancellor claiming the salary, on 5.11.2003. The petitioner was served with a notice dated 17.5.2004 (Annexure P-7) in which it is stated that the petitioner is given one month's salary in lieu of notice period as per terms and conditions contained in the letter of appointment dated 27.6.2003, as his services are no longer required. It is also stated in the show-cause notice that the petitioner had been appointed against a post reserved for Scheduled Caste Category. The candidature of the petitioner was considered for the post believing that he had given correct information in the application form. It had come to the notice of the respondents that the person belonging to "Chimba" Caste is covered

under Backward Class "A" category under the Haryana Government Notification. As such the petitioner was not entitled to be appointed against the post meant for Scheduled Caste Category as he belongs to "Chimba" Caste. It is further stated that the petitioner was appointed on the post under mistaken belief that he belongs to the Scheduled category.

3. Learned counsel for the petitioner has submitted that the action of the respondents in issuing order (Annexure P-7) is not sustainable as the order has been passed without complying with the rules of natural justice. The petitioner had been appointed after following the due procedure for selection. The petitioner did not conceal any material fact from the respondents. There was no condition in the advertisement that only the reserved category candidates who are residents of Haryana, would be considered. This condition has now been subsequently incorporated by the respondents in the Advertisement No. 1 of 2004. The petitioner having not misrepresented in any manner, cannot be denied the service. The order (Annexure P-7) clearly causes civil consequence and the same could not have been passed without observing rules of natural justice. In support of the submission, learned counsel relies on a Division Bench judgment of this Court rendered in the case of Rakesh Kumar v. Improvement Trust, Ludhiana 1998(1) S.C.T. 381.

4. Mr. Namit Kumar, learned counsel for the petitioner has further submitted that the petitioner cannot be made to suffer for the mistake committed by the respondents. The respondents had appointed the petitioner after checking the certificates submitted by the petitioner. The father of the petitioner died in harness whilst in government job in Himachal Pradesh. The petitioner did not make any application for compassionate appointment in Himachal Pradesh since he had been appointed on the post of Lecturer by the respondents. He has further argued that the petitioner could have even competed for the post which was meant for the General Category. According to the learned counsel, the action of the respondents in issuing the Notice (Annexure P-7) is wholly unfair, arbitrary and against the rules of natural justice, and therefore, the same deserves to be quashed.

5. We have anxiously considered the submissions made by the learned counsel. It is not disputed that the petitioner was put on probation for a period of two years as per letter of appointment dated 27.6.2003 (Annexure P-4). It is also not disputed that the petitioner had not completed the period of probation. It is also accepted that the caste to which the petitioner belongs, is not a recognised Scheduled Caste in the State of Haryana. The Caste "Chimba" is recognised as Backward Class "A" Category in the State of Haryana. Therefore, the petitioner was not eligible to even apply for the post. The respondents have merely corrected a mistake which had been committed. It has been corrected at the first opportunity which was available to the respondents. Even though the petitioner may not have made misrepresentation, the fact remains that the appointment of the petitioner had been made against a post which is reserved for the category of

Scheduled Caste. The petitioner cannot be permitted to continue on a post which is reserved for the Scheduled Caste Category. Admittedly, the caste of the petitioner is not recognised as a Scheduled Caste in the State of Haryana. Counsel for the petitioner was repeatedly asked as to whether it would make any difference even if opportunity of hearing had been given to the petitioner before the Notice dated 17.5.2004 (Annexure P-7) had been issued. Learned counsel has submitted that the petitioner could have tried to persuade the authority to adjust him on some other post. He could even have been adjusted on a post belonging to the General Category. We are unable to accept the aforesaid submissions of the learned counsel. Post of a Lecturer in a University is a much sought-after post. The post is to be filled after due advertisement and following the criteria for selection provided under the statutes of the University. It is not a post which can be given to an individual by way of adjustment. By permitting the petitioner to continue on the post, this Court would be directing the respondents to perpetuate an illegality. The observations made by the Division Bench of this Court in the case of Rakesh Kumar (supra) are of no assistance to the petitioner in the present case, The aforesaid judgment had been rendered in the facts and circumstances of that particular case. The petitioner therein had been appointed on a Class IV post in the rank of Daftri. He had been appointed on 3.5.1995. His services were terminated on 31.10.1996 on the ground that he was under-age at the time of recruitment and was thus ineligible for appointment. It was specifically pleaded by the petitioner that he was not less than 16 years of age on the date of his appointment in April, 1995, It was also pointed out that the respondents were totally oblivious of the statutory rules which permitted appointment at the age of 16 years. In view of the aforesaid facts and circumstances, it was held that the order having been passed in breach of rules of natural justice, was liable to be quashed. In the present case, the petitioner has been appointed on a post of Lecturer which was reserved for members of the Scheduled Caste Category. Undoubtedly, the petitioner does not belong to the members of the Scheduled Caste Category in the State of Haryana. Therefore, he has no right whatsoever to occupy the post which is meant for the reserved category of Scheduled Caste. The respondents have merely corrected a mistake committed earlier, The petitioner was still on probation. The petitioner has been given one month's salary in lieu of notice as stipulated in the appointment letter. Since the services of the petitioner was terminated during the period of probation, it was not necessary for the respondents to observe the rules of natural justice. The notice which had been issued to the petitioner does not cast any stigma on the petitioner. The order has not been passed by way of punishment. It merely records that a mistake committed has been corrected. Therefore, in such circumstances, non-observance of rules of natural justice would not render the order terminating the services of the petitioner void. This view of ours would find support from a judgment of the Supreme Court in the case of The District Collector and Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. v. M. Tripura Sundari Devi 1990(4) S.L.R 237. In that case, the admitted facts were that the respondent

applied for Grade-1 and Grade-II teacher posts in September, 1985 pursuant to a newspaper's advertisement calling for applications for the said posts, Admittedly, the qualification prescribed in the advertisement for the said posts was a second class degree in M.A., and the respondent held a third class degree in M.A. However, on 27.12.1985, an order was issued wrongly by the first appellant appointing her as a Post Graduate Teacher in Hindi. The order stated that her appointment was subject to the production of original certificates and on compliance with the other necessary formalities. When pursuant to the order, the respondent approached the authorities with the certificates, it was noticed that the respondent was not qualified for the post. She was, therefore, not allowed to join the service, and was sent back. The respondent, thereafter approached the Andhra Pradesh Administrative Tribunal at Hyderabad. She claimed that she had joined her duties on 2.1.1986 and that she should be allowed to continue in service with all the benefits from that day. The Tribunal passed the impugned order directing the appellants to allow her to join duties and to pay her salaries from the date she reported for duties in compliance with the order of December 27, 1985. When the matter was considered by the Supreme Court it was held that the Tribunal is clearly in error. It was further observed as follows:-

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint person with inferior qualifications in such circumstances unless; it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

6. We are of the considered opinion that the aforesaid observations are fully applicable to the facts and circumstances of the present case. The petitioner cannot be permitted to continue on a post to which he is not entitled. The petitioner is at liberty to resort to any other remedy, including civil suit, with regard to the non-payment of salary, for the period that he has actually worked.

7. In view of the above, we find no merit in the writ petition and the same is dismissed.